Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule	)))	MB Docket No. 17-318

REPLY COMMENTS OF UNIVISION COMMUNICATIONS INC.

Univision Communications Inc. ("Univision") files these reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding on the national television audience reach cap (the "Cap").

I. THE CAP DOES NOT SERVE THE PUBLIC INTEREST AND SHOULD BE ELIMINATED.

Univision agrees with commenters supporting elimination of the Cap, who explain that the dramatic changes in the media landscape have overtaken whatever merit there once may have been to an *ex ante* prohibition on a broadcaster being able to reach a certain percentage of the population.[1] Commenters who supported retention—or even expansion—of the Cap relied on outdated rationales that have already been rejected by the Commission, and erroneously claimed that relaxation or elimination of the Cap would harm localism.

More than fifteen years ago, the Commission found that the Cap was no longer necessary to serve diversity or competition interests.[2] Today, those conclusions are even more persuasive.

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[1] *See, e.g.*, Comments of Nexstar Broadcasting, Inc., MB Docket No. 17-318 at 3 (Mar. 19, 2018) ("Nexstar Comments"); Comments of Sinclair Broadcast Group, Inc., MB Docket No. 17-318 at i (Mar. 19, 2018) ("Sinclair Comments"); Comments of the National Association of Broadcasters, MB Docket No. 17-318 at 11 (Mar. 19, 2018) ("NAB Comments").

[2] *In re 2002 Biennial Regulatory Review*, FCC 03-127, ¶¶ 509, 535 (2003).

As Nexstar explained, "[i]t is beyond dispute that the video marketplace has changed considerably since 2002."[3] Changes since the Cap was adopted have transformed the media marketplace into one where viewers enjoy a wide and diverse array of video programming options, including options that did not exist in 1985, and were only just emerging in 2002 when the Commission last substantively addressed this issue.[4] Not surprisingly, these seismic shifts in the national media landscape are reflected in corresponding changes in national viewing patterns.[5] In such a competitive and diverse media marketplace, there is no rational basis for an *ex ante* rule that assumes any transaction that would result in a broadcaster being able to reach more than a certain percentage of the population, by its very nature, is harmful to the public interest.

A. *Eliminating the National Ownership Cap Would Benefit Local Programming Interests by Permitting Increased Scale.*

Contrary to the untested "big is bad" approach to policymaking reflected in the Cap and by those commenters seeking to retain it, there is a public interest benefit in permitting television station groups to grow to sufficient scale to absorb the significant costs required to create programming that is responsive to the needs and interests of local viewers in additional markets. By hindering the ability of broadcasters to expand geographically in an increasingly competitive landscape, the Cap has the counterproductive effect of *reducing* local competition and diversity

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[3] Nexstar Comments at 15; *see also, e.g.*, Sinclair Comments at 6–9; NAB Comments at 11–22.

[4] For example, cable and satellite television services are now available to more than 99 percent of American homes. And online video consumption has proliferated to the point where Americans watch tens of billions of online videos per month from subscription services like Netflix and Hulu, online video purchases and rentals from Amazon, Apple and other video merchants, and free online videos from Facebook, YouTube, and a host of other online platforms.

[5] For instance, non-broadcast platforms now account for more than 60 percent of overall television viewing in the U.S. *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, DA 17-71, ¶ 117 (2017). And last year, Netflix subscribers surpassed the number of cable subscribers in the U.S., and YouTube's worldwide viewership surpassed one billon hours per day.

by preventing broadcasters that are willing and able to serve local communities—including historically underserved communities—from doing so.

Univision presents a case in point: its ownership and operation of 43 full-power television stations throughout the United States, made possible by the UHF Discount, has enabled it not only to create two national broadcast networks competing with established English language networks, but also to introduce new Spanish language local news services to additional markets across the country.[6] DISH cited decades-old journal articles to argue erroneously that "recent empirical research" shows that larger broadcasters do not invest in local content and coverage, and Free Press similarly speculated that broadcasters freed from the constraints of the Cap "would likely" not use their resources to invest in local programming.[7] But the facts on the ground belie these unsupported assertions, particularly in Univision's case. Univision's national reach certainly has not deterred it from providing high quality local newscasts on its owned-and-operated ("O&O") stations. For example:

- Univision's O&O stations in Los Angeles, Houston, Dallas, Chicago, and San Francisco have the highest rated early local newscasts in their markets among viewers 18-49, *in any language*.[8]

[6] Absent the UHF Discount, Univision would be deemed to have a national reach of approximately 45% of all television households.

[7] *See* Comments of DISH Network L.L.C., MB Docket No. 17-318 at 11 (Mar. 19, 2018); Comments of Free Press, MB Docket No. 17-318 at 12 (Mar. 19, 2018) ("Free Press Comments").

[8] *See* The Nielsen Company, Nielsen Station Index, Q1 2018 (1/1/18-4/01/18) (Live +SD; Adults 18-49). Nielsen defines "early local news" as a local newscast with a M-F 6 p.m. ET/PT, 5 p m. CT start time. These ratings only include regular newscasts.

- In 2017 alone, the local newscasts on Univision O&O stations were awarded 121 regional Emmys, including five Emmys for Univision's WLTV-DT in Miami and another six Emmys for its WGBO-DT in Chicago.[9]

- GLAAD honored the KMEX-DT newscast in Los Angeles with an award for Outstanding Local TV Journalism in 2017 for its news story, "A la Calle Por Quien Soy."[10]

- In 2017, the Radio and Television News Association of Southern California awarded KMEX-DT a Golden Mike award.[11]

- In 2015, the Radio Television Digital News Association awarded KMEX-DT the Edward R. Murrow Award for its 6:00 pm newscast—the only TV station in Los Angeles among the regional winners.[12]

Clearly, Univision's viewers and peers have recognized its investment in local news service.

Nor has Univision's national reach deterred it from innovating and experimenting with new technologies, like next-generation television / ATSC 3.0. The Commission has authorized Univision's O&O station in Phoenix to host a test of ATSC 3.0 broadcasting conducted by the Pearl Group and network O&Os,[13] and Univision is one of the local broadcasters committed to ATSC 3.0 experimentation in Dallas.

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[9] *Univision Honored with 128 Emmy Awards in 2017*, Dec. 6, 2017, https://corporate.univision.com/corporate/press/2017/12/06/univision-honored-128-emmy-awards-2017/.

[10] *List of GLAAD Media Award Recipients: 28th Annual GLAAD Media Awards in Los Angeles*, Apr. 1, 2017, https://www.glaad.org/releases/list-glaad-media-award-recipients-28th-annual-glaad-media-awards-los-angeles.

[11] *68th Annual Golden Mike Awards 2017 Winners List*, Dec. 10, 2017, https://www.rtna.org/goldenmikeawards/17winners.asp.

[12] *Univision Los Angeles is Awarded the 2015 Edward R. Murrow Award by the Radio Television Digital News Association*, Apr. 29, 2015, https://corporate.univision.com/corporate/press/2015/04/29/univision-los-angeles-is-awarded-the-2015-edward-r-murrow-award-by-the-radio-television-digital-news-association/.

[13] *See* Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Christopher G. Wood, Unimas Partnership of Phoenix (Mar. 29, 2018); *see also Univision Switches On First ATSC 3.0 Station in Phoenix Test Market*, Apr. 9, 2018, https://www fiercecable.com/video/univision-switches-first-atsc-3-0-station-phoenix-test-market. The Phoenix test includes the O&O stations of three different networks, including not only the Univision host station but also Fox and Telemundo.

In addition, Univision's national reach has not deterred it from bringing new content to viewers over its O&O stations' multicast channels. For example, Univision's O&O stations make up the largest affiliate group for Bounce, the multicast network directed to African-American viewers;[14] launched the GetTV network and continue to be its largest affiliate; helped to launch the Justice and Quest networks; and continue to carry the Grit, Escape, LAFF and EETV multicast networks.

In short, Univision's relatively broad national audience reach has made possible significant investments in local news, next-generation technologies, and new content, all to the benefit of local viewers. Univision's history demonstrates the flawed nature of the proposal by the Affiliates Associations, who argue that the Cap should be made *stricter* for networks (by elimination of the UHF discount) while being loosened solely for non-network stations.[15] The very rationales proffered by the Affiliates Associations in support of a two-tiered cap—such as investment in local news, experimentation with next-generation broadcasting, and launch of multicast content—apply at least equally to Univision's O&O stations, which are commonly-owned with the Univision and UniMás broadcast networks. Thus, the rationales advanced by the Affiliates Associations illustrate that relief from the current cap should be provided to *all* broadcast station owners, regardless of whether or not they are commonly-owned with a

[14] John Lafayette, *Exclusive: Bounce TV Extends Univision Deal*, Mar. 4, 2014, https://www.broadcastingcable.com/news/exclusive-bounce-tv-extends-univision-deal-129577.

[15] *See* Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (the "Affiliates Associations"), MB Docket No. 17-318 at 10–25 (Mar. 19, 2018) ("Affiliates Associations Comments"). Although the Affiliates Associations clarify at certain points in their comments that they are targeting "television stations owned by the Big Four national networks" for more burdensome ownership regulation, Univision opposes any suggestion that there is justification for broad, *ex ante* rules that apply different rules based on whether the station group owner is or is not also an owner of a popular broadcast network.

network, so that any station group will be able to invest savings from national scale into local service.

It is not surprising that an artificial constraint on national audience reach fails to serve localism, because national audience reach is a poor proxy for serving local interests. Other FCC ownership rules limit (or before their repeal, limited) the type and number of media outlets that a party could own in a particular geographic market. The Cap is unique, however, in limiting the number of households *across* geographic markets that may be reached, notwithstanding the fact that there is no evidence of a "national" market for local television stations. By analogy, no one would seriously consider regulations preventing Google or Twitter from even reaching 30 percent of American households in an effort to improve localism. In fact, as noted above, the Cap likely *harms* broadcasters' ability to serve local interests by depriving them of economic efficiencies that would permit the greatest amount of investment in local service.

B. *Commission and Antitrust Enforcement Authorities Can Address Any Concerns With a Broadcaster's Increased National Reach on a Transaction-Specific Basis.*

Commenters advocating for retention or expansion of the Cap start from the premise that, absent the Cap, broadcasters will be free to expand their national reach without any restraints or adverse consequences.[16] But that is not the case. To the extent there are public interest or competitive concerns with the expansion of a particular broadcaster's national reach, the Commission and antitrust authorities are well-equipped to address them on a case-by-case basis. Thus, as is the case in virtually every other sector of the U.S. economy, there is no need for an *ex ante* prohibition on broadcasters' national audience reach.

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[16] *See, e.g.*, Free Press Comments at 13 (contending that "[c]ompetition would suffer tremendously should the national audience reach limit be increased or scrapped").

Cable television, for example, has not been subject to a national ownership cap since 2009.[17] But the lack of an *ex ante* cap does not preclude the Commission or the antitrust agencies from assessing whether or not a proposed merger of two cable companies presents competitive or (for the Commission) other public interest concerns, and if necessary, imposing conditions on or blocking a merger. The Commission likewise can consider the effects of a broadcaster's increased national reach from a transaction under its public interest standard, including with respect to whether a transaction will or will not enhance localism. In fact, no other media platform is currently subject to a national ownership cap, which further demonstrates that *ex ante* rules are not necessary to protect local interests in the current media landscape.

II. THE COMMISSION CANNOT ELIMINATE THE UHF DISCOUNT WHILE RETAINING THE CAP.

The Commission should reject suggestions to effectively lower the permitted national audience reach of broadcasters by eliminating the UHF discount while maintaining a percentage-based national ownership cap.[18] In addition to harming localism, competition and diversity, such a lowering of permitted national audience reach would upset Univision's and others' substantial reliance interests on the Cap and violate the law, as the Commission cannot justify eliminating the UHF discount in isolation without substantially raising or eliminating the Cap.[19]

Free Press attempts to disregard broadcasters' reliance interest on the UHF discount by claiming that due to the mere *possibility* of UHF discount repeal one day, broadcasters could not

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[17] *See Comcast Corp. v. FCC*, 579 F.3d 1, 9–10 (D.C. Cir. 2009) (vacating the FCC's 30% cap on the market share of a single television cable operator).

[18] *See, e.g.*, Free Press Comments at 21-24.

[19] Joint Comments of ION Media Networks, Inc., Univision Communications Inc., and Trinity Christian Center of Santa Ana, Inc., MB Docket No. 17-318 at 3–5 (Mar. 19, 2018); *see also, e.g.*, Reply Comments of Univision Communications Inc. in Support of Petition for Reconsideration, MB Docket No. 13-236, at 5–6 (Jan. 23, 2017).

reasonably have relied on its existence.[20] This argument is without merit. The Commission has routinely approved transactions by station groups relying on the UHF discount, without conditions. For example, in 2001, the Commission approved Univision's billion dollar acquisition of 13 UHF stations that had been broadcasting home shopping programming in order to launch a second Spanish-language program network, expanding Univision's reach into Boston, Atlanta, Cleveland, Orlando and Tampa, without any such condition. Put simply, the reliance interests built up during the over 30 years that the UHF discount has been in place cannot be ignored. Thus, while Univision urges the Commission to eliminate the Cap entirely, if the Commission should decide to retain the Cap, it must also retain (or expand) the UHF discount or permanently grandfather existing station ownership groups, including future buyers.

Respectfully submitted,

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[20] Free Press Comments at 23–24.